

of the case to the Administrator. The Administrator, or his or her designee, will then review the record.

(d) *Standard of review.* Upon review, the Administrator, or his or her designee, will sustain the initial decision unless it is based on an erroneous finding of fact or an erroneous interpretation or application of case law, statute, regulation, or SBA policy.

(e) *Order.* The Administrator, or his or her designee, will:

(1) Affirm, reverse, or modify the initial decision, which determination will become the final decision of the SBA upon issuance; or

(2) Remand the initial decision to the Judge for appropriate further proceedings.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47249, July 18, 2002]

#### § 134.229 Termination of jurisdiction.

Except when the Judge reconsiders a decision or remands the case, the jurisdiction of OHA will terminate upon the issuance of a decision resolving all material issues of fact and law. If the Judge reconsiders a decision, OHA's jurisdiction terminates when the Judge issues the decision after reconsideration. If the Judge remands the case, the Judge may retain jurisdiction at his or her own discretion, and the remand order may include the terms and duration of the remand.

[67 FR 47249, July 18, 2002]

### Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

#### § 134.301 Scope of the rules in this subpart C.

The rules of practice in this subpart C apply to all appeals to OHA from:

(a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and

(b) NAICS code designations, pursuant to part 121 of this chapter.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47249, July 18, 2002]

#### § 134.302 Who may appeal.

Appeals from size determinations and NAICS code designations may be filed with OHA by the following, as applicable:

(a) Any person adversely affected by a size determination;

(b) Any person adversely affected by a NAICS code designation. However, with respect to a particular sole source 8(a) contract, only the AA/8(a)BD may appeal a NAICS code designation;

(c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; or

(d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47249, July 18, 2002]

#### § 134.303 Advisory opinions.

The Office of Hearings and Appeals does not issue advisory opinions.

[67 FR 47249, July 18, 2002]

#### § 134.304 Commencement of appeals from size determinations and NAICS code designations.

(a) Appeals from size determinations and NAICS code designations must be commenced by filing and serving an appeal petition as follows:

(1) If the appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 15 days after appellant receives the size determination;

(2) If the appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 30 days after appellant receives the size determination;

(3) If the appeal is from a NAICS code designation, then the appeal petition must be filed and served within 10 days after the issuance of the initial solicitation. If the appeal relates to an amendment affecting the NAICS code, then the appeal petition must be filed and served within 10 days after the issuance of the amendment.

(b) An untimely appeal will be dismissed. However, an appeal which is